



**Division of
Human Rights**

NEW YORK STATE
DIVISION OF HUMAN RIGHTS

NEW YORK STATE DIVISION OF
HUMAN RIGHTS on the Complaint of

MARY A. HURD-BROWN,

Complainant,

v.

CITY OF NEW YORK, DEPARTMENT OF
EDUCATION,

Respondent.

DETERMINATION AND
ORDER AFTER
INVESTIGATION

Case No.
10200296

Federal Charge No. 16GB902466

On 3/1/2019, Mary A. Hurd-Brown filed a verified complaint with the New York State Division of Human Rights ("Division") charging the above-named respondent with an unlawful discriminatory practice relating to employment because of age, and disability in violation of N.Y. Exec. Law, art. 15 (Human Rights Law).

After investigation, and following opportunity for review of related information and evidence by the named parties, the Division has determined that there is NO PROBABLE CAUSE to believe that the respondent has engaged in or is engaging in the unlawful discriminatory practice complained of. This determination is based on the following:

The evidence gathered during the course of the investigation of the instant complaint is not sufficient to support complainant's allegations of unlawful discrimination in relation to employment on the bases of age or disability.

Complainant, who has a disability and was 69 years of age at the time of filing the complaint, has alleged that respondent has subjected her to disciplinary proceedings for discriminatory reasons related to her protected classes. Complainant alleges her performance was rated unsatisfactory and she was subjected to harassment for discriminatory reasons.

Respondent asserts that complainant is undergoing disciplinary proceedings because of her poor performance and unprofessional conduct. It further asserts that complainant has not suffered an adverse employment action, as disciplinary charges against complainant are pending

and complainant continues to be employed and paid her salary. Respondent asserts that complainant's request for an accommodation is currently pending.

The Division's investigation revealed that complainant's allegations of discrimination are premature, as complainant has not suffered an adverse employment action as of the time of filing the instant complaint. Moreover, the investigation revealed that complainant's request for an accommodation is pending.

The Division's investigation did not reveal evidence that respondent's reasons for its actions are unworthy of credence and a mere pretext for unlawful discrimination. The record supports that complainant is undergoing disciplinary proceedings because of poor performance and unprofessional conduct. The record shows complainant had a history of poor performance. Complainant received poor performance reviews in 2006-2007, 2016-2017, 2017-2018. Complainant had had numerous letters to file as a result of her performance and conduct, and four letters to file from September 2018 to January 2019.

The record shows the complainant was not completing the number of home visits assigned to her. Complainant claimed she could not afford transportation for the home visits. The record shows the complainant was provided enough money by the NYCDOE to pay for an unlimited weekly MetroCard and Access-A-Ride, regardless of whether she qualified for a disability. The record shows respondent made reasonable suggestions for transportation to the complainant. Furthermore, the record shows respondent asked complainant to map out her home visits in advance to ensure she was completing those assigned to her.

The record shows complainant incorrectly completed time sheets or did not complete sheets. The investigation supports that complainant was insubordinate to supervisors on multiple occasions.

The Division's investigation did not reveal evidence of a causal nexus between complainant's age or disability and respondent's treatment of complainant. The investigation supports that complainant's request for an accommodation is pending and the parties are engaging in an interactive process. The only reference to the complainant's age in the record is complainant's theory that the disciplinary hearings are being used to force her to retire because of her age. Complainant's mere belief and conclusory allegations that she was discriminated against because of her age and disability are not sufficient to establish a nexus to respondent's actions.

Based on the above, a determination of no probable cause is warranted.

The complaint is therefore ordered dismissed and the file is closed.

PLEASE TAKE NOTICE that any party to this proceeding may appeal this Determination to the New York State Supreme Court in the County wherein the alleged unlawful discriminatory practice took place by filing directly with such court a Notice of Petition and Petition within sixty (60) days after service of this Determination. A copy of this Notice and Petition must also be served on all parties including General Counsel, State Division of Human

Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. DO NOT FILE THE ORIGINAL NOTICE AND PETITION WITH THE STATE DIVISION OF HUMAN RIGHTS.

Your charge was also filed under the Americans with Disabilities Act (ADA). Your charge was also filed under the Age Discrimination in Employment Act (ADEA). Enforcement of the aforementioned law(s) is the responsibility of the U.S. Equal Employment Opportunity Commission (EEOC). You have the right to request a review by EEOC of this action. To secure review, you must request it in writing, within 15 days of your receipt of this letter, by writing to EEOC, New York District Office, 33 Whitehall Street, 5th Floor, New York, New York 10004-2112. Otherwise, EEOC will generally adopt our action in your case.

Dated:

09/18/19
Brooklyn, New York

STATE DIVISION OF HUMAN RIGHTS

By:



William LaMot
Regional Director

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